

**ANNUAL REPORT
OF THE
COMMITTEE ON CRIMINAL LAW AND PROBATION ADMINISTRATION
TO THE ILLINOIS JUDICIAL CONFERENCE**

Honorable Michael P. Toomin, Chair

Hon. Thomas R. Appleton
Hon. Amy M. Bertani-Tomczak
Hon. Vincent M. Gaughan
Hon. Terrence J. Hopkins
Hon. Donald C. Hudson
Hon. Kurt Klein
Hon. John Knight
Hon. Vincent J. Lopinot
Hon. Colleen McSweeney Moore

Hon. Sue E. Myerscough
Hon. Steven H. Nardulli
Hon. Lewis Nixon
Hon. James L. Rhodes
Hon. Teresa K. Righter
Hon. Mary S. Schostok
Hon. Eddie A. Stephens
Hon. Walter Williams

October 2003

I. STATEMENT ON COMMITTEE CONTINUATION

The Committee on Criminal Law and Probation Administration ("Committee") is charged with providing recommendations regarding the administration of criminal justice and the probation system. The Committee believes the Judicial Conference should maintain a committee to focus on these issues during the coming Conference year.

The Committee is working on a number of significant issues of a continuing nature, including:

- a comprehensive review of probation programs and practices
- a study of youthful offender programs and other sentencing alternatives
- efforts to reform criminal law and procedure
- review of proposals to amend Supreme Court Rules governing criminal cases

Given the importance of these tasks, the Committee requests that it be continued in the coming Conference year.

II. SUMMARY OF COMMITTEE ACTIVITIES

A. Probation Programs. The Committee began a comprehensive review of probation practices and procedures in the 2001 conference year. Though much work remains to be done, the Committee has made significant progress in several key areas.

1. Foundation Issues. The Committee's review of probation programs began with a general review of the fundamental purposes and goals of probation - what works and what doesn't work. Based on its review, the Committee unanimously agreed that the "BrokenWindows" model of probation supervision is worthwhile and should be used to the greatest extent possible. The Broken Windows approach to probation focuses on protection of the public, making offenders accountable, ensuring restitution to the victim, providing education and treatment to the offender, and community involvement.

The Broken Windows model prescribes seven specific strategies to achieve these goals:

- 1) Place public safety first
- 2) Supervise probationers in the neighborhood, not the office
- 3) Rationally allocate resources
- 4) Provide strong enforcement of probation conditions, and quick response to violations
- 5) Develop partners in the community
- 6) Establish performance-based initiatives
- 7) Cultivate strong leadership

Many probation departments have adopted at least some of the strategies of the Broken Windows model to improve supervision of probationers. The Committee recognizes that not every probation department in the state will be able to follow all of the strategies in the Broken Windows model. The Committee believes, however, that probation departments should be encouraged to follow the Broken Windows strategies whenever possible.

Further discussion of the Broken Windows model is included as Attachment 1 to this Report.

2. Domestic Violence. During the Conference year the Committee reviewed programs designed for offenders who commit acts of domestic violence. The Committee found that cognitive and behavioral training is the most important means of preventing further domestic violence. Training and treatment programs seek to break the cycle of domestic violence by teaching the offender to deal with problems and emotions in constructive, non-violent ways.

The Committee found that most counties do not have in-house probation programs to address domestic violence, but nearly all have access to some type of treatment program for

probationers. Unfortunately, treatment programs for domestic violence cases are often quite expensive (\$1,800 to \$2,400 per offender). As a result, offenders may not receive treatment. The Committee believes that probation departments should consider pooling resources on a circuit-wide basis to ensure that perpetrators of domestic violence receive appropriate treatment. A brief summary of the Committee's findings on domestic violence programs is included as Attachment 2 of this Report.

3. Sex Offender Programs. The Committee found that probationers who are sex offenders are often handled through specialized programs. The Committee believes that the probation departments that have developed specialized programs for sex offenders are doing a good job. Proper supervision and treatment can significantly reduce the risk of recidivism by sex offenders during the term of supervision.

The Committee will continue to study probation programs for sex offenders in the coming Conference year. New legislation on sex offenders and program standards adopted by the Sex Offender Management Board will have a substantial impact on how sex offenders are treated and supervised while on probation. The Committee will consider making a recommendation to allow longer probation sentences for sex offenders, to ensure that supervision does not end while there is still a significant risk of recidivism by the offender. The Committee will also consider the possibility of creating a uniform order of probation for sex offenders. Additional information regarding probation programs for sex offenders is included in Attachment 3 of this Report.

4. Gang Issues. The Committee also studied probation programs specially designed for supervision of gang offenders. Specialized programs for gang offenders are relatively rare, though the problem of gang-related crime affects many communities. Encouragingly, the specialized, intensive probation programs that have been instituted for gang offenders seem to be having a positive effect in reducing recidivism and gang participation. A report on specialized gang offender programs is included as Attachment 4 of this Report.

B. Youthful Offender Programs. The Committee continues to believe that it is important to address crime by youthful offenders in ways that will protect the public and rehabilitate the offender. The Committee believes that it is particularly important to provide youthful, first-time offenders with the opportunity to avoid the stigma of a criminal conviction, because the opportunity for full rehabilitation is, in itself, a strong incentive to change behavior patterns and avoid further misconduct. An interim report on youthful offender programs is provided in Attachment 5 of this Report. The Attachment lists issues to be resolved and provides sample statutory provisions from other jurisdictions. The Committee intends to focus on the specific provisions of a youthful offender sentencing scheme in the coming Conference year.

C. Proposed Supreme Court Rule 402A - Revocation Proceedings. During the 2002 Conference year, the Committee proposed the adoption of a new rule 402A that would incorporate the admonishments required to be given prior to acceptance of an admission in a proceeding to revoke probation, conditional discharge or court supervision. See Attachment 6 of this Report. The Committee's proposal was made in response to the case of *People v. Hall*, 198 Ill.2d 173 (2001), which specified the requirements of due process in the context of a probation revocation proceeding where the defendant admits a violation.

In January 2003, proposed Rule 402A was considered at public hearings held by the Supreme Court Rules Committee. Public comments concerning proposed Rule 402A were referred back to the Criminal Law and Probation Administration Committee. It was suggested at the public hearing that in addition to adding Rule 402A, Rule 605 should be amended to provide that admonitions concerning appeal rights apply when a defendant admits to a violation in a revocation

proceeding.

The Committee considered the public comments concerning Rule 605, and has forwarded its response to the Supreme Court Rules Committee. The Committee is not recommending changes to Rule 605 as suggested in the public comments.

In the case of *People v. Tufte*, 165 Ill.2d 66 (1995), the Supreme Court held that Rule 605(b) does not apply when a defendant admits to a violation of conditional discharge. In *Tufte*, the Court addressed the issue in the following passage:

Defendant contends that this admission to having violated the terms of his conditional discharge amounted to a 'plea of guilty' under Rule 605(b). On this basis, the defendant argues that the trial court should have given him the admonitions applicable to a guilty plea set forth in Rule 605(b) and that the failure to do so amounted to reversible error. We disagree, and conclude that the trial court was not obligated to give the defendant the admonitions set forth in Rule 605(b).

Tufte, 165 Ill.2d at 75. In light of *Tufte*, and the implicit recognition of *Tufte* in the *Hall* opinion, the Committee decided not to recommend an amendment to Rule 605 that would mandate admonitions on rights of appeal when a defendant admits a violation of probation, conditional discharge or court supervision.

D. Criminal Law Revisions. One of the goals of the Committee during the Conference year was to monitor the progress of the Criminal Code Rewrite and Reform Commission ("CCRRC"). The Committee continues to support revision of Illinois criminal law statutes to simplify and clarify existing law, to provide trial courts with a range of effective sentencing options, and to provide trial judges with the discretion essential to a fair and effective system of criminal justice. The Committee believes, however, that the CCRRC will not provide the kind of change that is needed. In the coming Conference year the Committee will attempt to identify a process by which necessary changes to the Criminal Code may be made.

III. PROPOSED COMMITTEE ACTIVITIES FOR THE NEXT CONFERENCE YEAR

During the next Conference year, the Committee intends to continue its review of probation programs and practices. The Committee also will attempt to identify a process to effectuate necessary changes to the criminal law. The Committee also will continue to review the existing Supreme Court Rules on criminal cases, and to consider new and pending proposals to amend the Rules.

IV. RECOMMENDATIONS

The Committee is making no recommendations to the Conference at this time.

2003 REPORT

ATTACHMENT 1

Foundation Issues in Probation:

Transforming Probation Through Leadership: The “Broken Windows” Model

Submitted to:
Illinois Judicial Conference
Committee on Criminal Law & Probation Administration

Prepared by:
Judge Michael P. Toomin
Judge John Knight

Foundation Issues in Probation

In our 2002 report, the Committee on Criminal Law and Probation Administration announced that in the present year we planned to focus on probation matters with a view to identifying areas of concern and recommending such improvements as deemed practical as well as feasible. Our reexamination of core issues led us to “Broken Windows” Probation, a concept that the Committee believes could well serve as a working model for probation in Illinois.

Background

Transforming Probation Through Leadership: The “Broken Windows” Model, a monograph published in July 2000, was written by the Reinventing Probation Council, a group of 12 veteran practitioners from local, state and federal probation agencies and a professor of political science.

It was written to spark a reexamination of probation’s purpose and practices and to address the Council’s view that probation was generally ineffective and lacking credibility as evidenced by poor probationer performance and a shortage of funding.

The term “broken windows” originated from an article published in 1982 called, “Broken Windows: The Police and Neighborhood Safety.” It was used to describe the theory that small disorders and breakdowns in civic norms lead to broader disorder and serious crime. The article advocated community policing involving community partnerships and innovative strategies not traditionally associated with law enforcement.

Transforming Probation Through Leadership: The “Broken Windows” Model borrows many theories associated with community policing and adopts them to probation. The document has been the subject of much discussion and debate among probation practitioners. While some aspects have been criticized, it nonetheless contains a number of principles that are guiding developments in the policies and practices of probation throughout the country.

Why Probation Matters

According to the Council, probation is the most frequently used sentencing option – about two-thirds of those convicted receive probation. Approximately 4 million adults are on probation, which is 60% of the total who are under some form of correctional supervision (i.e., probation, parole, prison, or jail).

The “Broken Windows” Model submits that community supervision can reduce recidivism and change offender behavior when appropriate intervention and treatment strategies are used. It can also provide an important means for compensating crime victims and the community as a whole through restitution and community service.

Why Probation is Not Working

- **The Crisis of Legitimacy in the Justice System**

The monograph posits that the current crisis in criminal and juvenile justice is fueled by the public's conviction that the system no longer represents an effective response to the problem of crime. Despite the recent and welcome drops in the crime rate, the citizenry continues to express a widespread fear of crime and a deep skepticism over the justice system's capacity to provide reasonable assurances of public safety. Given the dismal results of recent public opinion surveys regarding the performance or effectiveness of probation, it is evident that the field lacks convincing strategies that convey how public safety offenders can be managed in a credible fashion while under supervision in the community.

- **Poor to Dismal Probationer Performance**

The Council notes that Beto, Corbett, and DiIulio (2000) emphasize the importance of dealing with crimes committed by probationers. They estimate that roughly two-thirds of probationers reoffend or commit another crime within three years of their sentence. They base their estimate, one which several Council members share, on the arrest rates reported in the best jurisdiction-specific research; the fact that half of all probationers violate the terms of their sentence with another crime; and, the presence of recent ex-probationers who figure prominently on arrest rolls, in plea-bargain-gorged felony courts, and in prisons, all for another crime.

"Broken Windows" advocates submit that the frequency and scale of probationer recidivism represents an issue that carries decisive consequences for the well being of communities across the country. In view of their pivotal position in the justice system, probation executives must play a critical role in confronting the crime problem and in promoting a view of probationer recidivism that recognizes the threat such offenders present to public safety.

If these efforts are to achieve credibility with the public, we should expect only a maximum of 10 percent of all probationers to commit another crime within three years of a probationary sentence. Embracing this goal as a benchmark against which to measure the performance of the field serves as a bold yet necessary step in addressing the crisis afflicting probation.

- **The Breakdown of Supervision**

The "Broken Windows" Model disparages that "widespread and damning practice" by which probation supervision is carried out from within the confines of an office. Referred to by the Reinventing Probation Council as "fortress" or "bunker probation," this style of

supervision relies on office-bound interactions with probationers, mostly during the working weekday hours of 8:00 a.m. – 5:00 p.m., to gather information and monitor offender compliance. It is estimated that probation officers spend an average of five to twenty minutes once a month with offenders in an office setting where they are dependent on the offenders to give them truthful and accurate information regarding their activities. Very little, if any, time is spent supervising offenders in the neighborhoods where they live, work and play.

According to the Council, this passivity in case management results not just in offender anonymity, but the absence of a visible presence in the communities and neighborhoods probation officers are assigned to serve. Given the operational culture of many agencies, probation officers place a paramount emphasis on administrative paperwork and processing required reports, rather than outcomes that contribute to public safety.

- **A Decline in Funding**

The Council correctly observes that the practice of probation has been affected by the criminal justice system's shift toward more punitive sanctions during the past several decades. This shift has triggered a growing and unrelenting reliance on incarceration in response to crime, accompanied by ever-greater expenditures for prison expansion. At a national level, even though probation alone is responsible for the supervision of nearly six out of ten offenders under some form of correctional supervision, it receives less than ten percent of state and local government funding earmarked for corrections.

The Council concluded that there is little doubt that insufficient funding and inadequate staffing have exerted an influence over the general malaise impacting on probation. In some jurisdictions, very high average caseloads, sometimes ranging from 100 to 500 per probation officer, have rendered supervision ineffectual. This has contributed in part to the growing problem of offender failure rates on supervision and the even more vexing issue of probationer recidivism. Both are unacceptably high and are evidence of poor to dismal probationer performance while under supervision; both are symptomatic of and speak to the need to redirect the practice of probation.

Probation Reform: Meeting the Public's Expectations

- **What Does the Public Want From the Justice System?**
 - **Safety From Violent Predators** – In sharp contrast to current sentencing practices, the Council posits that the public believes prisons should be reserved only for violent, dangerous felons, especially sex offenders and major drug dealers. Nobody else should be put in prison, especially not non-violent youth and substance abusers;

- **Accountability for the Offense** – In the Council’ s view, the public believes that the vast majority of criminals are not being held accountable by the system. Probation is generally less than a slap on the wrist;
- **Repair of the Damage Done** – What was broken, fixed; what was stolen, returned; what was destroyed, replaced;
- **Education and Treatment of the Offender;** and
- **Involvement in Making Decisions**

! __What Does the Public Want From Offenders?

- **Full acceptance of responsibility for their behavior;**
- **Understanding the harm their actions caused;**
- **Acknowledge having done something wrong;**
- **Apologies;**
- **Repair the harm, and**
- **Make restitution for the harm**

Strategies for Improving Probation

- **Strategy #1: Place Public Safety First –**

The Council opines that in reinventing probation it is critical that those in the field be always mindful that the primary concern of the public is to be free from crime. To the members of the community, crime rates, arrest rates, and conviction rates are not as important as to what safety looks like in the neighborhoods where they carry on their daily routines. In view of the public’ s expectations expressed above, probation practitioners must be responsive to the following questions;

- Can community members walk around the block in the evening without fear?
- Can their children play at the local playground safely?
- Are their schools safe?
- Are offenders living in their neighborhoods? If so, are they being properly managed and held accountable?
- Are probation practices providing effective treatment geared toward offenders’ safe reentry to the community?
- Are there going to be fewer victims in the future?

- **Strategy #2: Supervise Probationers in the Neighborhood, Not the Office**
 - The “Broken Windows” Model asserts that for probation supervision to be effective, it must take place where the offender lives, works and engages in recreational and other activities. While the office is rightfully the base of probation supervision, the neighborhood should be the place of supervision. Firsthand knowledge of where the offender lives, his family, and his immediate and extended environment are critical elements of meaningful supervision.
 - What this suggests is that effective supervision is active, engaged, community-centered supervision. The strategies and methods relied on by probation officers must reach outward beyond their individual caseloads to the community. By adopting this type of approach to supervision, probation officers will end up devoting a significant portion of their energies to steering offenders toward socializing institutions, and connecting them with prosocial peers, mentors and other adults.
 - Within this approach, meaningful and effective neighborhood-based supervision must be conducted at times that are not confined to the traditional 8:00 a.m. to 5:00 p.m., Monday through Friday, workday. To be effective, it must be delivered at nights, on weekends, and on holidays.
- **Strategy #3: Rationally Allocate Resources**
 - The Council interjects the need for probation departments to rationally and strategically allocate their resources is interdependent with meaningful, neighborhood-centered supervision. Conducting supervision in local neighborhoods and communities must be guided by a commitment to rationally allocate staff and other resources where they are needed the most. Probation officers must focus on those offenders who are most at risk to violate their conditions of supervision and on those whose offenses or affiliations pose a public safety risk (e.g., sex offenders, gang members, drug dealers, and those with histories of violence).
 - The importance of accurate, information-driven decisions when dealing with offenders under community supervision cannot be overstated. Probation officers should develop as much information as possible on the offenders they are expected to supervise through comprehensive presentence investigation reports, juvenile records, psychological evaluations, and risk and need assessments. Probation agencies must rely on sound assessments at the front end of the system to make placement decisions and they should continue to use a variety of assessments for

specific offender types to monitor their progress and maintain a proper match relative to programming.

- **Strategy #4: Provide for Strong Enforcement of Probation Conditions and a Quick Response to Violations**

- The “Broken Windows” Model laments that all too frequently offenders on probation come to the realization that they can expect two or more “free ones” when it comes to dirty urine samples, electronic monitoring violations, or failure to comply with their supervision conditions. Offenders subject to probation learn that behavior in violation of the rules, even serious violations, will not necessarily result in their revocation and removal from supervision. It is also the case that hundreds of thousands of probationers abscond from supervision annually. While a majority, if not all, jurisdictions issue warrants for such violators, little is done systematically to locate absconders, serve them with warrants or hold them in any way accountable for compliance with their sentence.
- For probation to be meaningful, this permissiveness and laxity in enforcement practice must be reversed. In its place, probation practitioners must be committed to strong enforcement of all probation conditions and to providing timely responses to all violations.

- **Strategy #5: Develop Partners in the Community**

- According to the “Broken Windows” Model, the need to establish enduring partnerships with the citizenry, other agencies, and local interest groups is critical to the success of probation. Forming such partnerships increases probation’s leverage in dealing with offenders and contributes to a shared co-ownership for managing the risk such offenders present under community supervision. This shift will require that probation agencies practice inclusiveness by reaching out well beyond the traditional boundaries that currently guide their organization’s interactions with others.
- The Council advocates that probation administrators should include community participation whenever there is a need to develop policies, initiate new programs, craft supervision strategies or deliver services. Their participation may take a variety of forms, including community advisory boards, local neighborhood associations, community justice centers or citizens boards of directors. In essence, the community needs to play a vital and participatory role in community corrections.
- In the Council’s view, probation administrators have an obligation to share information about offenders, and participate in task force and interagency work

groups that monitor offender behavior, thereby providing for enhanced public safety. These groups include criminal justice agencies, as well as child protective services, churches and schools. Probation agencies have access to vital information that should be shared with the community.

- **Strategy #6: Establish Performance-Based Initiatives**

- The Council reasons that probation practitioners have a crucial need for information-based decision-making. This information pertains, in part, to conducting comprehensive offender assessments to facilitate the targeting of high-risk or problematic offender populations for appropriate programming and supervision. Even more, the strategic and rational allocation of resources by probation agencies must be premised on developing, adjusting, and retaining programs based on performance. This means that probation administrators must rely increasingly on evidence-based practices when justifying the continued operation or retention of particular programs.
- A commitment to performance-based initiatives requires that probation agencies develop appropriate and effective programming, draw on research that speaks to what works, and pay careful attention to program design, implementation and evaluation.

- **Strategy #7: Cultivate Strong Leadership**

- The “Broken Windows” Model strongly emphasizes that leadership is the most important element in reengineering probation towards a system that has clear values, emphasizes public safety, rationally allocates resources, provides meaningful supervision and a quick response to violations, practices inclusiveness and assumes accountability for results.
- The Model sites three challenges facing correctional leaders:
 - Leaders must shift away from the “get tough” rhetoric often used to characterize public attitudes and move towards “an agenda that targets the community’s quality of life;”
 - Leaders must embrace the democracy of citizen partnerships, which includes neighborhood groups, community organizations, the faith community, and organizations that work with or are impacted by the problem of crime; and
 - Leaders must encourage staff to step well beyond the standard routines of case management to the creativity of problem solving.

Impediments to Change Probation

- Traditional Work Hours – Most probation officers work standard hours and the “Broken Windows” Model calls for working outside of traditional hours in order to be most effective in the community.
- Office-Based Supervision – Most departments interact with probationers primarily in the office while the Model states that supervision must take place in the field. Training regarding field safety and skills must accompany this shift.
- Traditional Staff Supervision and Accountability Practices by Managers – With officers conducting more work in the field and at different hours, managers will have to relinquish some degree of control and learn to focus more on outcomes than on staff’s daily work tasks.
- Probation Officer Hiring Qualifications – Field staff should be hired specifically for the areas in which they will be working. Also, an ability to handle paperwork will not be as important as the abilities to develop partnerships and think creatively.
- Standard Training Practices – A shift in the work paradigm must also include a shift in staff training. New officers should be assigned to older more experienced officers for training and mentoring.
- Absence of Community and Other Agency Involvement – Probation acting alone does not have sufficient capacity to achieve public safety goals. It needs the involvement and support of other agencies and the community.
- Caseload Size and Results – Moving to more manageable caseloads is a critical factor in ensuring success of reinventing probation under the “Broken Windows” Model.
- Insufficient Use of Available Technology – Advanced technology for communication and offender accountability will become increasingly important as work hours are changed and officers are moved into the field.
- Case Assignment Practices – Case assignments must reflect on geographical specialization according to the “Broken Windows” Model.

2003 REPORT

ATTACHMENT 2

DOMESTIC VIOLENCE PROBATION

- I. To a great extent there does not exist any specialized probation for persons convicted of domestic violence. The exception to that statement is in the larger counties of the State:
 - A. Cook County maintains a specialized domestic violence unit and offers cognitive behavior therapy within the probation program; and,
 - B. In 11 or 12 counties where a specialized probation officer supervises domestic violence offenders, only 6 of those officers have cognitive behavior training.
- II. In all counties, other than Cook, anger management/domestic abuse counseling is outsourced to private agencies. Problems have been noted throughout the State with the services of some agencies, all of which must be certified by the Department of Human Services.
 - A. The cost of services, absent the expenditure of probation funds, places those services outside the reach of defendants of moderate to minimal financial means; and
 - B. Some programs require the attendance of probationers at a large number of continuous sessions, which necessitates a starting over in the event of a missed session, even for a good cause.
- III. It is suggested that the various probation departments work with the various circuit-based Domestic Violence Coordinating Councils throughout the State to standardize the provision of probation services to domestic violence offenders. Such an approach could also have a goal of bringing cognitive behavior modification programs to each circuit and cognitive behavior training to at least one office per circuit.

Honorable Thomas R. Appleton
Honorable Steven Nardulli

2003 REPORT

ATTACHMENT 3

Subcommittee report on the Sexual Offender Probation Program

This report is to serve as an update to the Committee on Criminal Law and Probation Administration (Committee) of the current concerns of the sexual probation offender program being utilized in the state of Illinois. The information in this report was gathered from the various county probation departments and from individual probation officers within the State.

The majority of those placed on probation for a sex offense are either fondlers or those involved with sexual misconduct in the use of the internet. In spite of public perception, only approximately 10 % of sexual offenders are pedophiles. Those working within the system, as well as public perception, realize that sexual offenders are rarely cured. With this understanding it is recognized that those sexual offenders sentenced to probation must be intensely supervised. Under the current statute, 730 ILCS 5/5-6-3, the maximum period of probation for an eligible sex offender is 4 years despite the fact that sexual offenders have the highest recidivism rate over an 8 - 10 year period of 40%. When a sexual offender is arrested this arrest breaks the cycle for a 3-4 year period. This break in the cycle of a sexual offender occurs due to the fear of re-arrest and the fact that a sexual offender is being supervised during the period of probation.

On the other hand, it is recognized that the recidivism rate is not rising due to the fact that probation officers are receiving better training regarding the supervision of sexual offenders. In addition, the treatment available to sexual offenders places a greater emphasis on providing the sexual offender with cognitive behavior treatment during the period of probation. This cognitive behavior treatment focuses on the *intent* behind the sex offense. The cognitive behavior treatment programs cause the sexual offender to vocalize and understand why they committed the offense and to understand what led up to the commission of the sex offense. The sexual offender is educated as to the whys of the sex offense and given the tools to avoid taking the same path that led to the commission of the offense in the first instance.

The sub-committee has reviewed the "Transforming Probation Through Leadership: The 'Broken Windows' Model" prepared by the Reinventing Probation Counsel. According to the Report, public perception of probation as a whole is at an all-time low. The public, and most offenders, perceive a sentence of probation as a free ride, with little supervision and little consequence for the violations of its conditions. To restore legitimacy to the criminal justice system, to promote public safety,

and to insure accountability for the offense, the sub-committee believes that the sexual offenders sentenced to probation must be held to the strictest compliance with the orders of probation. Violations must be dealt with swiftly and immediately and absconders must be located and arrested.

The sub-committee brings the following recommendations to the Committee for discussion during the 2004 term. The sub-committee recommends that the Committee discuss whether or not a longer term of probation for the sex offender is appropriate. Although the arrest breaks the cycle, the public is at great risk that a sexual offender will likely commit a subsequent sex offense with an 8-10 year period.

The sub-committee also recommends that the Committee consider the need for a universal sexual offender probation order to be utilized by all probation departments. Along with the statutory conditions already in use, the Committee should consider the following additional terms as a condition of probation. These additional terms would be case specific in that they would be individualized for each particular offender, as applicable.

- (1) All sexual offenders should participate in a sexual offender evaluation prior to being considered for a sentence of probation and should be ordered to participate in a specific treatment program as a condition of receiving a sentence of probation. These terms are being currently considered in HB3556 (see attached HB3556, currently being considered by the Governor. Although the bill only speaks to those offenders charged and/or sentenced with a felony sex offense. It is the recommendation of the sub-committee that the sexual offender evaluation should be mandatory for all sex offenses.)
- (2) The sexual offenders shall have no contact with any one under the age of 18 unless by order of Court.
- (3) The sexual offenders shall not reside with a minor unless by order of Court.
- (4) The sexual offender shall not obtain employment or volunteer work where that employment or volunteer work is frequented and/or used by children under the age of 18, i.e. amusement parks, arcades, schools, etc.
- (5) The sexual offender shall not possess pornography and/or sexually stimulating material to the offender and shall not patronize any area where such material is available.

(6) The sexual offender shall be responsible for their appearance, i.e. the wearing of undergarments and clothing when in places where another person may be expected to view them.

(7) The sexual offender shall not utilize the services of the 900 number telephone services or any other numbers available for the sexual gratification of the caller.

(8) The sexual offender shall follow specific routes of travel in their neighborhood, i.e. to prevent a sexual offender from waiting or sitting at a bus stop or park where children are present.

(9) The sexual offender shall not use a computer to obtain access to the internet.

Respectfully submitted by Judge Amy Bertani-Tomczak and Judge Teresa K. Richter.

2003 REPORT

ATTACHMENT 4

Report on Gang Issues
Impacting the Criminal Justice System

Submitted to:

Illinois Judicial Conference

Committee on Criminal Law and Probation Administration

Submitted by:

Honorable James L. Rhodes

Honorable Mary S. Schostok

Honorable Donald C. Hudson

August, 2003

Gang violence is a problem that many jurisdictions across the state and country are required to deal with. This report reviews specific programs that address gang issues and the probationary status of gang members. Additionally, the committee has endeavored to determine general guidelines and protocols in addressing gang issues.

Many programs have proven ineffective when dealing with gang violence, as shown by high recidivism rates. Gang members are three times more likely to get arrested while on probation than non-gang members.¹ Additionally, only one-third of gang members satisfactorily complete all of the terms of their probation.²

Not only is the recidivism rate higher among individuals with gang affiliations, but the types of offenses that gang members are on probation for are generally more serious than the types of offenses that non-gang members are on probation for. According to data collected in 2000, nearly 80 percent of gang members on probation were on probation for felony level offenses, while only 45 percent of non-gang members were serving felony sentences³.

Based upon information obtained about gang membership, many agencies have tried to create and maintain programs in order to help deter and/or rehabilitate

¹ Sharyn Adams and David Olson, "An analysis of gang member and non-gang members discharged from probation", Illinois Criminal Justice Authority newsletter, Vol. 6, No. 2, September 2002.

² "An analysis...at page 3

³ "An analysis...at page 2

gang members. Two programs that address the special concerns relating to gang members on probation are the Cook County Gang Intervention probation unit, and the Kane County Cooperative Agencies Specialized Treatment Program. (See attachments A and B) Education, employment, curfews, and drug treatment awareness form the basis for both programs. Drug treatment awareness appears to be an essential aspect of these programs because of the increased likelihood of gang members to be individuals who abuse drugs, based upon earlier studies. The education and employment aspects of these programs also prove to be an effective deterrent to gang violence, as both encourage socialization and activity outside of the gang. Both programs recognize the importance of increased home visits and more stringent curfew enforcement by probation officers.

However, more home visits and more stringent curfew requirements will not advance the cause of reducing gang violence alone. A brief review of a number of probation officer reports shows that quite often, probationers are not at home during their curfew hours and home visit times. The numbers of occurrences like this escalate when dealing with gang members. Programs such as the Cook County Gang Intervention probation unit, and the Kane County Cooperative Agencies Specialized Treatment Program begin to take into account the need for multiple agencies to work together in order to curb gang violence and gang membership. The success of these programs is promising and indicates that a multi-faceted approach is necessary.

The “Gang Violence Reduction Project (GVRP) in Little Village” is a project that was successful in helping to curb gang violence. (See synopsis of report as attachment C) This project was conducted in the Little Village neighborhood of Chicago. The goal was to reduce the number of instances of gang violence in Little Village as well as the severity of the crimes that were still committed. This project is one on which others may be built due to the nature of its implementation, and the success it has enjoyed.

The GVRP prospered where other projects failed because of the broad base of support and the numerous angles from which the team attacked the problem of gang violence. The GVRP utilized an integration of efforts by law enforcement and criminal justice agencies with those of community agencies, grass roots organizations, individual citizens, and citywide organizations. Additionally, community outreach workers worked to provide gang members with opportunities that might otherwise have been closed to them. Finally, probation officers worked with the project organizers to change methods and procedures by which probation was carried out, in order to maximize the effectiveness of the project. This many faceted, broad based approach to dealing with the problem of gang violence proved very effective in the Little Village neighborhood.

The committee is well aware that many self-reporting gang members if convicted of violent crimes are not eligible for probation. The committee also recognizes, consistent with the “Broken Window” model for probation reform, that programs, such as the Cook County Gang Intervention probation unit and the Kane County Cooperative Agencies Specialized Treatment Program, represent a substantial and meaningful step towards reducing the recidivism rate among gang members. The

committee also urges probation departments, judges and prosecutors to look at the results of such projects as the “Gang Violence Reduction Project in Little Village.” (See synopsis of report as attachment C.) The results of this project are very promising, and it appears that a community-based approach to gang issues is a very effective strategy.

Attachment A

IN THE CIRCUIT COURT OF COOK COUNTY

PEOPLE OF THE STATE OF ILLINOIS)	
)	
VS)	CASE # _____ IR # _____
)	
_____)	CHARGE(S) _____
DEFENDANT)	_____
		Statutory Citation(s)

CONDITIONS OF SUPERVISION FOR THE GANG INTERVENTION UNIT

THE COURT ORDERS THAT IN ADDITION TO THE CONDITIONS SPECIFIED ON THE ATTACHED ORDER OF SENTENCE OF PROBATION, THE ABOVE NAMED DEFENDANT BE SUBJECT TO THE FOLLOWING SPECIAL CONDITIONS OF THE GANG INTERVENTION UNIT:

The defendant shall:

- Report to the probation department in accordance with the three phase requirements of the Gang Intervention Unit.
- Disassociate from all known gang members and refrain from all gang activity.
- Refrain from possession of gang paraphernalia and/or clothing.
- Comply with the curfew established by the Adult Probation Department.
- Submit to searches of your person, residence, papers, automobile and/or effects at any time such requests are made by the probation officer when there is reasonable suspicion to require it, and consent to the use of anything seized as evidence in a court proceeding.
- Submit to breath, urine, and/or blood specimen analysis for the presence of a prohibited drug or alcohol.
- Not change residence, move outside the jurisdiction of the court, or leave the state for any period of time without prior permission of the probation officer.
- Perform 130 hours of community service as directed by the officers of the probation department.
- Enroll in high school or a GED program (if the defendant does not have a high school diploma or equivalent degree).
- Verify employment monthly. If unemployed, seek employment and/or be placed in an appropriate job training/skills program.
- Attend and participate in such counseling, treatment or educational programs as may be directed by the officer(s) of the probation department and abide by all rules, regulations, and directions of any such programs.

Other: _____

Noted: _____ Judge: _____

I acknowledge receipt of this Order and agree to abide by the conditions. I understand that a failure to follow the conditions of this sentence could result in a new sentence up to the maximum penalty for the offense which is before the Court.

Attachment A

Summary of Three Level Requirements
For The Gang Intervention Unit

Level I Supervision – The offender shall be placed in Level I for a minimum period of six (6) months.

1. The probationer is required to have contact with the Gang Intervention Unit officer a minimum of three (3) face to face contacts per month. These contacts will consist of two (2) office visits bi-weekly, and one (1) home visit.
2. The probationer is required to submit verification of employment monthly. If the probationer is unemployed, he/she may be required to attend appropriate job training skills classes as determined necessary by the Gang Intervention Unit Officer.
3. The probationer is subject to a nightly 7:00 pm to 7:00 am curfew. This curfew may be modified if the probationer is employed, in school, or has a verifiable medical/personal situation during these designated hours of curfew.
4. Arrest checks will be obtained monthly.
5. The probationer will be required to perform forty-five (45) hours of community service work during Level I prior to moving into Level II.
6. Drug testing will be conducted on a random basis with a minimum of six (6) conducted while the probationer is in Level I.
7. The probationer is required to enroll in high school or in an equivalent (General Education Degree) program. The probationer must begin this program while in Level I. If the probationer has already acquired a high school diploma or GED, he/she must be employed, seeking employment or placed in an appropriate job training/skills program.
8. The probationer is required to attend and participate in any Gang Awareness/Gang Intervention Programs that he/she may be referred to.
9. The probationer is required to attend any substance abuse treatment program deemed necessary by the Gang Intervention Unit Officer.

Attachment A

Level II - The offender shall be moved into Level II upon the successful completion of the conditions of Level I and with the Gang Intervention Unit Supervisor approval. The offender shall be placed in Level II for a minimum period of six (6) months.

1. The probationer is required to have contact with the Gang Intervention Unit officer a minimum of three (3) face to face contacts per month. These contacts will consist of two (2) office visits bi-weekly, and one (1) home visit.
2. The probationer is required to submit verification of employment monthly.
3. The probationer is subject to a nightly 9:00 pm to 7:00 am curfew. This curfew may be modified if the probationer is employed, in school, or has a verifiable medical/personal situation during these designated hours of curfew.
4. Arrest checks will be obtained monthly.
5. The probationer will be required to perform forty-five (45) hours of community service work during Level II prior to moving into Level III.
6. The probationer must be progressing sufficiently in his/her high school or GED program if applicable. The progress must be verified by the Gang Intervention Unit officer. The Gang Intervention Unit Officer shall discuss the probationer's high school or GED status with instructors/administrators if deemed necessary.
7. Drug testing will be conducted on a random basis with a minimum of three (3) conducted while the probationer is in Level II.
8. The probationer is required to attend and participate in any Gang Awareness/Gang Intervention Programs that he/she may be referred to.

Attachment A

Level III – The offender shall be placed into Level III upon successful completion of Level II. He/she will remain in this level for the duration of the probation sentence unless a violation of probation is initiated.

1. The probationer is required to have contact with the Gang Intervention Unit officer a minimum of two (2) face to face contacts per month. These contacts will consist of one (1) office visit, and one (1) home visit.
2. The probationer is required to submit verification of employment monthly.
3. The probationer may be subject to a curfew to be determined at the discretion of the Gang Intervention Unit Officer.
4. Arrest checks will be obtained monthly.
5. The probationer will be required to perform forty (40) hours of community service work during Level III prior to successful termination of probation. The probationer shall complete a total of one-hundred thirty (130) hours of community service.
6. The probationer must complete or be headed towards completion of his/her high school or GED program. Verification must be obtained by the Gang Intervention Unit Officer.
7. Drug testing will be conducted on a random basis as deemed necessary.
8. The probationer is required to attend and participate in any Gang Awareness/Gang Intervention Programs that he/she may be referred to.

Status reports will be submitted to the sentencing court outlining the defendant's progress or lack of progress during supervision. Upon successful completion of all three levels, the probationer will be returned to court for termination of probation.

The Gang Intervention Unit may exempt a probationer from performing community service if the probationer meets the following criteria:

- a) full time employment is maintained by the probationer;
- b) a disability on the part of the probationer which severely limits or prohibits employment;
- c) full time student status is being maintained by the probationer in an educational or vocational program;
- d) the probationer is a single parent with children age five (5) or under residing in the household; or
- e) the probationer is of retirement age and collecting retirement benefits. Any reason for exemption must be documented in the case file.

Attachment A

Status reports will be submitted to the sentencing court outlining the defendant's progress or lack of progress during supervision. Upon successful completion of all three phases, the probationer will be returned to court for termination of probation.

Certification

I hereby acknowledge that I have read my plan of supervision (4 pages) in full and understand its terms and conditions.

Signature: _____

Date: _____

Attachment B

ORDER OF PROBATION

CIRCUIT OF KANE COUNTY, ILLINOIS

DEFENDANT: _____ CASE NO.: _____
 OFFENSE: _____ TERM OF PROBATION: _____ TO _____
 COURT COSTS: _____ FINE: _____ RESTITUTION: _____ PROBATION FEES: _____

Your application for probation has been received and approved by this Court. In accordance with the authority vested in this Court by the laws of the State of Illinois, you are hereby placed on probation for such a period of time as stated above; or until entitled to discharge from this probation. You are hereby advised that under the law the Court may at any time revoke or modify any conditions of the probation, and you shall be subject to arrest upon order of the Court. At any time within the period of your probation the Court may impose or order execution of sentence for your original offense in accordance with the laws of the State of Illinois and commit you to such institution as provided by law.

It is the further order of the Court that your case be assigned to the supervision of Adult Court Services, 16th Judicial Circuit, and its representative probation officer under the following conditions. They are authorized to report to the Court on all matters pertaining to your probation and to make such recommendations and take such action as the Court may require in your case.

CAST

PROBATION RULES

The following rules and regulations have been approved by the 16th Judicial Circuit Court, which will govern your period of probation. It will be necessary that you conform to these rules, as well as any other that may from time to time be set forth by your probation officer. The infraction of any of them will constitute a violation of your probation and will cause you to be eligible for revocation and be sentenced on the crime with which you were originally charged.

I SHALL:

1. Report to Adult Court Services, 374777 Rt.38, Suite 150, St. Charles, immediately upon being sentenced.
2. Obey all federal and state laws and local ordinances.
3. Immediately notify my probation officer of any arrest.
4. Report in person to my probation officer as frequently as directed and permit my probation officer to visit me in my home or elsewhere to the extent of his/her duties.
5. Not leave the State of Illinois without giving advance notice to and obtaining written permission from my probation officer.
6. Refrain from possessing a firearm or other dangerous weapon.
7. Notify my probation officer of any change of residence or employment within 48 hours of such change.
8. Attempt to work at a lawful occupation and/or further my education and support my dependents.
9. Pay all court ordered monies in full not less than 30 days before the end of probation in the amounts specified by Court.
10. Promptly undertake evaluations determined appropriate by the probation department (including but not limited to substance abuse and psychological) and thereafter participate in such treatment, therapy, counseling and/or remedial education as are appropriate, based upon said evaluation.
11. Submit to breath, urine, and/or blood specimen for analysis for the possible presence of a prohibited drug or alcohol as requested by the probation officer, and bear the expense of any such analysis.
12. Special Conditions: of the CAST program are incorporated herein and attached thereto.

DATE: _____ ENTER: _____ Judge

I UNDERSTAND AND AGREE TO COMPLY WITH THESE PROBATION CONDITIONS:

DATE: _____ SIGNED: _____ Defendant

***** (To be completed by Defendant and Probation Officer) *****

PROBATION OFFICER: _____

ATE: _____ DEFENDANT: _____

Attachment B

CAST

Offender's Name

Offender's Address

Offender's Phone Number

Offender's photograph

CAST PROBATION RULES

1. Defendant shall not wear [fill in color combinations] (fill in name of gang)
2. Defendant shall not wear clothing, including jackets/hats with the following symbols/logos:
 - A. (These spaces include information specific to the gang to which defendant belongs, such as gang initials (i.e. MLD-Maniac Latin Disciples; LK Latin Kings, etc). Included will be either the Five Point Star or Six Point Star, depending on the affiliation of the offender, and any identifiers specific to the gang (i.e. pitchforks, crowns, dice, etc.
 - B.
 - C.
 - D.
3. Defendant shall not display hand signs/gestures of any gang.
4. Defendant shall abide by 8 pm to 6 am curfew unless employment influences his schedule. During the defendant's curfew he must consent to a search of his person or home by any police or probation officer.
5. Defendant shall not enter the following geographic areas unless given approval by the court:
 - A. Specific Street Names
 - B. Specific Apartment complexes(See Attached map, produced by Aurora Police and attached as part of the order.
6. Defendant to have no physical/verbal contact with the following individuals:

(Names of fellow gang members and/or victims are specified.)
7. Defendant shall not flee or hide from the police, shall submit to a field search by the police at any time, shall submit to a pat down search by police at any time, and shall have no arrests while on CAST probation.

Attachment C

Review and Synopsis of the Outcomes of the
Gang Violence Reduction Project in Little Village

The Gang Violence Reduction Project (GVRP) was conducted between 1992 and 1997. It was a community-based, interinstitutional effort to reduce the level of gang violence in Little Village, an area of high gang activity in Chicago. The GVRP enjoyed a great deal of success in many areas of reducing gang violence and gang membership.

As a result of the GVRP, a number of youth involved in the project ceased gang activities after about two years. In fact, in one gang, 46% of program youth declared a gang affiliation at the beginning of the program, and two years later, only 29.7% of the program youth declared gang membership.

Education level and employment increased as well, as a result of the GVRP. About 17% fewer gang members dropped out of high school and as many as 32% more gang members had jobs within two years in the program.

Self-reported offenses and arrests both declined over the program period in most crime categories. Total offenses reported dropped in violent crime, property crime, and drug selling.

All data and information was gathered from:

Spergel, Irving et. al., Evaluation of the Gang Violence Reduction Project in Little Village, Final Report Summary, The School of Social Service Administration, The University of Chicago, Chicago Il., 2002.

Attachment C

Evidence from police records and court files suggests that the GVRP was very successful at significantly reducing serious violent crime offenses. In fact, the reduction in serious violence offenses of program youth is more than 60% greater than the comparison group of youth who were not involved in the GVRP. Not only were serious offenses reduced among the project youth, but the numbers of total violent crime arrests were lower for program youth than non-program youth. These results are entirely in line with the objectives of the GVRP. An added benefit that was not an aim for the project, but an outcome nonetheless, was a reduced rate of gang-related drug crime for the project youth as compared to the comparison youth group.

It is clear that the GVRP was successful in Little Village as far as gang violence was concerned. The level of gang violence in Little Village did increase, but not nearly as much as it did in comparable communities. The project was able to slow the escalation of gang violence in Little Village.

The almost experimental nature of this project led to a number of observations about improvements for similar, subsequent projects. One of the major observations concerned the scope of the project. A wide, community based approach was used in most cases in the GVRP, but the success found could have been even greater had more community involvement occurred. This is shown by the fact that the proportion of youth who decreased their total arrests was 78% greater for youths involved in a

All data and information was gathered from:

Spiegel, Irving et. al., Evaluation of the Gang Violence Reduction Project in Little Village. Final Report Summary, The School of Social Service Administration, The University of Chicago, Chicago Il., 2002.

Attachment C

combined-service group as compared to youth involved in a single-type service group. Youths who benefited from combined-service were almost 3 times more likely to reduce their drug crime arrests than those youths who were in the single-type service group. When more opportunities and more services are directed towards these youths, they tend to be less active criminally. This could only improve with even more help from the community.

Based on interviews with community members who lived in Little Village and had no gang affiliation, the project evaluators were able to determine the level of change in the mood and perceptions of the citizens. During the project time, there was a significant increase in the number of Little Village residents who thought community quality of life was better. There was a perceived increase in safety, less fear of walking the streets, and decreased worry with respect to possible crime victimization. Little Village residents also reported feeling that the police were dealing effectively with the gang problem.

The GVRP developed an effective collaborative approach among the members of a team of street level police, probation, and community youth workers. The project achieved a significant reduction in certain types of crime among the approximately 200 targeted hardcore gang youth who were served by the program. The coordinated approach was highly effective in the reduction of serious gang violence and drug

All data and information was gathered from:

Spergel, Irving et. al., Evaluation of the Gang Violence Reduction Project in Little Village. Final Report Summary, The School of Social Service Administration, The University of Chicago, Chicago Il., 2002.

Attachment C

crime among individual targeted youth. The committee urges a review of this project and the successful results that were obtained.

All data and information was gathered from:

Spiegel, Irving et. al., Evaluation of the Gang Violence Reduction Project in Little Village, Final Report Summary. The School of Social Service Administration, The University of Chicago, Chicago Il., 2002.

2003 REPORT

2003 REPORT

ATTACHMENT 5

**ALTERNATIVE SENTENCING
FOR YOUTHFUL OFFENDERS:**

Submitted to:

Illinois Judicial Conference

Committee on Criminal Law & Probation Administration

Submitted by:

Judge Vincent M. Gaughan

Judge Lewis M. Nixon

Judge Mary Schostok

May 30, 2003

This Article has been prepared to be submitted to the Committee on Criminal Law and Probation Administration for open discussion and insight to establish guidelines for requesting action of the Illinois State Assembly. Through discussion, ideas and suggestions for the enactment of an Illinois Youthful Offender Act are hopefully to be obtained. Youthful Offender Act could provide judicial action resulting in a non conviction for the accused. In the alternative, a sentence geared for rehabilitation and conviction could also result, topics for discussion in the proposed act are following. There are also selected state statutes for comparison and use as guides in the preparation of the proposed act.

QUESTIONS FOR DISCUSSION
CONCERNING PROPOSED STATUTE:

- 1) Should proposed law apply to felonies and misdemeanors?
- 2) What types of crimes to be excluded or included?
- 3) What cases should be Expunged?
- 4) Should statute provide for conviction on some cases?
- 5) Should conviction be entered and later vacated and discharged?
- 6) Should statute apply to age of person at the time of the crime or at the time of litigation?
- 7) Eligibility requirements: age: _____, crime: _____, report: _____.
- 8) For eligibility - Report prepared for Judge by:
 - a) Probation;
 - b) Defense;
 - c) %
- 9) Sentencing:
 - a) Probation;
 - b) Probation w/ Community Service;
 - c) Boot Camp Incarceration;
 - d) County or State Detention

958.021 Legislative Intent

The purpose of this chapter is to improve the chances of correction and successful return to the community of youthful offenders sentenced to imprisonment by providing them with enhanced vocational, educational, counseling, or public service opportunities and by preventing their association with older and more experienced criminals during the terms of their confinement. It is the further purpose of this chapter to encourage citizen volunteers from the community to contribute time, skills, and maturity toward helping youthful offenders successfully reintegrate into the community and to require youthful offenders to participate in substance abuse and other types of counseling and programs at each youthful offender institution. It is the further intent of the Legislature to provide an additional sentencing alternative to be used in the discretion of the court when dealing with offenders who have demonstrated that they can no longer be handled safely as juveniles and who require more substantial limitations upon their liberty to ensure the protection of society.

New York: NY CLS CPL @ 720.10 (1999)

@720.10. Youthful offender procedure; definitions of terms

As used in this article, the following terms have the following meanings:

1. "Youth" means a person charged with a crime alleged to have been committed when he was at least sixteen years old and less than nineteen years old or a person charged with being a juvenile offender as defined in subdivision forty-two of section 1.20 of this chapter.

2. "Eligible youth" means a youth who is eligible to be found a youthful offender.

Every youth is so eligible unless:

- (a) The conviction to be replaced by a youthful offender finding is for (i) a class A-I or class A-II felony, or (ii) an armed felony as defined in subdivision forty-one of section 1.20, except as provided in subdivision three, or (iii) rape in the first degree, sodomy in the first degree, or aggravated sexual abuse, except as provided in subdivision three, or

- (b) such youth has previously been convicted and sentenced for a felony, or
 - (c) such youth has previously been adjudicated a youthful offender following conviction of a felony or has been adjudicated on or after September first, nineteen hundred seventy-eight a juvenile delinquent who committed a designated felony act as defined in the family court act.
3. Notwithstanding the provisions of subdivision two, a youth who has been convicted of an armed felony offense or of rape in the first degree, sodomy in the first degree, or aggravated sexual abuse is an eligible youth if the court determines that one or more of the following factors exist: (i) mitigating circumstances that bear directly upon the manner in which the crime was committed; or (ii) where the defendant was not the sole participant in the crime, the defendant's participation was relatively minor although not so minor as to constitute a defense to the prosecution. Where the court determines that the eligible youth is a youthful offender, the court shall make a statement on the record of the reasons for its determination, a transcript of which shall be forwarded to the state division of criminal justice services, to be kept in accordance with the provisions of subdivision three of section eight hundred thirty-seven-a of the executive law.
4. "Youthful offender finding" means a finding, substituted for the conviction of an eligible youth, pursuant to a determination that the eligible youth is a youthful offender.
5. "Youthful offender sentence" means the sentence imposed upon a youthful offender finding.
6. "Youthful offender adjudication". A youthful offender adjudication is comprised of a youthful offender finding and the youthful offender sentence imposed thereon and is completed by imposition and entry of the youthful offender sentence.

New York: NY CLS CPL @ 720.20 (1999)

@ 720.20. Youthful offender determination; when and how made; procedure thereupon

1. Upon conviction of an eligible youth, the court must order a pre-sentence investigation of the defendant. After receipt of a written report of the investigation and at the time of pronouncing sentence the court must determine whether or not the eligible youth is a youthful offender. Such determination shall be in accordance with the following criteria:
 - (a) If in the opinion of the court the interest of justice would be served by relieving the eligible youth from the onus of a criminal record and by not imposing an indetermination term of imprisonment of more than four years, the court may, in its discretion, find the eligible youth is a youthful offender; and
 - (b) Where the conviction is had in a local criminal court and the eligible youth had not prior to commencement of trial or entry of a plea of guilty been convicted of a crime or found a youthful offender, the court must find he is a youthful offender.
2. Where an eligible youth is convicted of two or more crimes set forth in separate counts of an accusatory instrument or set forth in two or more accusatory instruments consolidated for trial purposes, the court must not find him a youthful offender with respect to any such conviction pursuant to subdivision one of this section unless it finds him a youthful offender with respect to all such convictions.
3. Upon determining that an eligible youth is a youthful offender, the court must direct that the conviction be deemed vacated and replaced by a youthful offender finding; and the court must sentence the defendant pursuant to section 60.02 of the penal law.
4. Upon determining that an eligible youth is not a youthful offender, the court must order the accusatory instrument unsealed and continue the action to judgment pursuant to the ordinary rules governing criminal prosecutions.

Florida: Fla. Stat. @ 958.04 (1999)

@ 958.04 Judicial disposition of youthful offenders.

- (1) The court may sentence as a youthful offender any person:
 - (a) Who is at least 18 years or who has been transferred for prosecution to the criminal division of the circuit court pursuant to chapter 985;
 - (b) Who is found guilty of or who has tendered, and the court has accepted, a plea of *nolo contendere* or guilty to a crime which is, under the laws of this state, a felony if such crime was committed before the defendant's 21st birthday; and
 - (c) Who has not previously been classified as a youthful offender under the provisions of this act; however, no person who has been found guilty of a capital or life felony may be sentenced as a youthful offender under this act.
- (2) In lieu of other criminal penalties authorized by law and notwithstanding any imposition of consecutive sentences, the court shall dispose of the criminal case as follows:
 - (a) The court may place a youthful offender under supervision on probation or in a community control program, with or without an adjudication of guilt, under such conditions as the court may lawfully impose for a period of not more than 6 years. Such period of supervision shall not exceed the maximum sentence for which the youthful offenders was found guilty.
 - (b) The court may impose a period of incarceration as a condition of probation or community control, which period of incarceration shall be served in either a county facility, a department probation and restitution center, or a community residential facility which is owned and operated by any public or private entity providing such services. No youthful offender may be required to serve a period of incarceration in a community correction center as defined in s. 944.026. Admission to a department facility or center shall be contingent upon the availability of bed space and shall take into account the purpose and function of such facility or center. Placement in such a facility or center shall not exceed 364 days.
 - (c) The court may impose a split sentence whereby the youthful offender is to be placed on probation or community control upon completion of any specified period

of incarceration; however, if the incarceration period is to be served in a department facility other than a probation and restitution center or community residential facility, such period shall be for not less than 1 year or more than 4 years. The period of probation or community control shall commence immediately upon the release of the youthful offender from incarceration. The period of incarceration imposed or served and the period of probation or community control, when added together, shall not exceed 6 years.

(d) The court may commit the youthful offender to the custody of the department for a period of not more than 6 years, provided that any such commitment shall not exceed the maximum sentence for the offense for which the youthful offender has been convicted. Successful participation in the youthful offender program by an offender who is sentenced as a youthful offender by the court pursuant to this section, or is classified as such by the department, may result in a recommendation to the court, by the department, for a modification or early termination of probation, community control, or the sentence at any time prior to the scheduled expiration of such term. When a modification of the sentence results in the reduction of a term of incarceration, the court may impose a term of probation or community control, which when added to the term of incarceration, shall not exceed the original sentence imposed.

- (3) The provisions of this section shall not be used to impose a greater sentence than the permissible sentence range as established by the Criminal Punishment Code pursuant to chapter 921 unless reasons are explained in writing by the trial court judge which reasonably justify departure. A sentence imposed outside of the code is subject to appeal pursuant to s. 924.06 or s. 924.07.
- (4) Due to severe prison overcrowding, the Legislature declares the construction of a basic training program facility is necessary to aid in alleviating an emergency situation.
- (5) The department shall provide a special training program for staff selected for the basic training program.

2003 REPORT

2003 REPORT

ATTACHMENT 6

PROPOSED RULE 402A**Rule 402A. Admissions or Stipulations in Proceedings to Revoke Probation, Conditional Discharge or Supervision.**

In proceedings to revoke probation, conditional discharge or supervision in which the defendant admits to a violation of probation, conditional discharge or supervision, or offers to stipulate that the evidence is sufficient to revoke probation, conditional discharge or supervision, there must be substantial compliance with the following:

(a) *Admonitions to Defendant.* The court shall not accept an admission to a violation, or a stipulation that the evidence is sufficient to revoke, without first addressing the defendant personally in open court, and informing the defendant of and determining that the defendant understands the following:

(1) The specific allegations in the petition to revoke probation, conditional discharge or supervision;

(2) That the defendant has the right to a hearing with defense counsel present, and the right to appointed counsel if the defendant is indigent and the underlying offense is punishable by imprisonment;

(3) That at the hearing, the defendant has the right to confront and cross-examine adverse witnesses and to present witnesses and evidence in his or her behalf;

(4) That at the hearing, the State must prove the alleged violation by a preponderance of the evidence;

(5) That by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, there will not be a hearing on the petition to revoke probation, conditional discharge or supervision, so that by admitting to a violation, or by stipulating that the evidence is sufficient to revoke, the defendant waives the right to a hearing and the right to confront and cross-examine adverse witnesses, and the right to present witnesses and

evidence in his or her behalf; and

(6) The sentencing range for the underlying offense for which the defendant is on probation, conditional discharge or supervision.

(b) *Determining Whether Admission is Voluntary.* The court shall not accept an admission to a violation, or a stipulation sufficient to revoke, without first determining that the defendant's admission is voluntary and not made on the basis of any coercion or promise. If the admission or tendered stipulation is the result of an agreement as to the disposition of the defendant's case, the agreement shall be stated in open court. The court, by questioning the defendant personally in open court, shall confirm the terms of the agreement, or that there is no agreement, and shall determine whether any coercion or promises, apart from an agreement as to the disposition of the defendant's case, were used to obtain the admission.

(c) *Determining Factual Basis for Admission.* The court shall not revoke probation, conditional discharge or supervision, on an admission or a stipulation without first determining that there is a factual basis for the defendant's admission or stipulation.

(d) *Application of Rule 402.* The provisions of Rule 402(d), (e), and (f) shall apply to proceedings on a Petition to Revoke Probation.

Committee Comments

This Rule follows the mandate expressed in *People v. Hall*, 198 Ill. 2d 173, 760 N.E.2d 971 (2001).